

JUDICIAL PERFORMANCE EVALUATION PROGRAM

Questions and Answers for Attorneys

THE PROGRAM GENERALLY

1. What is JPE?

The Judicial Performance Evaluation (JPE) Program conducts evaluations of active judges for the purposes of judge self-improvement and for use by the General Assembly in the re-election process.

2. How was JPE established?

The JPE Program was established by statute and Rule of Court. See Virginia Code § 17.1-100 and Part Nine, Rules of the Supreme Court of Virginia (attached).

3. What are the goals of JPE?

There are two primary goals of JPE. One is to give judges useful information and feedback that will help them enhance their performance as judges. The second is to give members of the General Assembly relevant information to enable them to better evaluate judges who are candidates for re-election.

4. How is the Program governed?

Oversight of the JPE Program rests with the Chief Justice. The Program is administered by staff employed in the Office of the Executive Secretary.

The Chief Justice has appointed the JPE Advisory Committee to advise him with regard to operation of the Program. A list of current members of the Committee is attached.

5. What is VCU-SERL?

VCU-SERL is Virginia Commonwealth University's Survey and Evaluation Research Laboratory, in the L. Douglas Wilder School of Government and Public Affairs. It is the independent contractor that distributes and collects the surveys and prepares the evaluation reports.

THE EVALUATION PROCESS

6. What are the steps in the process?

The evaluation process consists of several steps:

- *A judge is scheduled for evaluation (see question 15, below).*
- *Attorneys and certain others who have appeared before that judge are asked to complete an evaluation survey.*
- *During the evaluation period, the evaluated judge completes a self-evaluation survey.*
- *A retired judge (facilitator judge) is assigned to the evaluated judge.*
- *Evaluation survey results are compiled into an evaluation report by VCU-SERL.*
- *The evaluation report is sent by VCU-SERL to the evaluated judge and to the facilitator judge.*
- *The facilitator judge observes the evaluated judge in the courtroom and meets privately with the evaluated judge to discuss the evaluation report and his or her observations.*
- *If the evaluated judge is in the final year of his or her term and has had at least one self-improvement evaluation at the present level of court, the evaluation report is sent to the Chairmen of the Courts of Justice Committees of the General Assembly, as required by Virginia Code § 17.1-100.*

7. What is the survey designed to evaluate?

The evaluation survey questions are designed to evaluate judges on the principles set forth in the Canons of Judicial Conduct for the Commonwealth of Virginia.

8. Who is surveyed?

Attorneys are surveyed for all judges. In addition to attorneys, jurors are asked to complete specially designed surveys for circuit judges. As of 2016, the JPE Program no longer surveys Court Service Unit staff and Department of Social Services staff appearing before J&DR district court judges. The JPE Advisory Committee is considering new survey groups; however, addition of new groups has not been implemented to date.

9. How are attorneys selected to receive a survey?

- **Eligibility Survey**

VCU-SERL sends an electronic eligibility survey to all active members of the Virginia State Bar twice per year to identify attorneys who have observed or appeared before a judge who has an upcoming evaluation. Attorneys are asked to indicate which of the listed judges they have observed or appeared before during a specific time period (three years for circuit judges; one year for district judges).

- **Case Information**

Attorneys' names are also obtained from data captured in the courts' case information systems for courts where the evaluated judge sits.

- **Staff Listings**

In addition, VCU-SERL uses attorney staff listings of relevant Commonwealth's Attorney's offices and Public Defender offices to ensure that those attorneys are included in the pool.

The attorneys identified from all these sources comprise a pool of potential attorney evaluators for the judge. Each judge has a unique pool of potential evaluators.

VCU-SERL strives to survey 250 attorneys for each judge. Judges in rural jurisdictions often have fewer than 250 total potential recipients. In that event, all potential recipients may receive a survey. VCU-SERL randomly selects the evaluation survey recipients where more than 250 attorneys are identified for a particular judge.

10. What happened to the sign-in sheets previously used in the courtroom to collect attorney names? Isn't that a more accurate way of knowing who to survey?

Paper sign-in sheets are no longer used. The eligibility survey (see question 9, above) has proven to be a much more effective and consistent source of potential survey respondents than the paper sign-in sheets. The average number of attorneys identified has increased from approximately 85 per judge to over 250 per judge.

11. How do I know that the e-mail I received about JPE isn't a phishing scam or some other spam?

The e-mail should come from this e-mail address: judiciaeval@vcu.edu.

- **Eligibility Surveys:**

The eligibility surveys are expected to be sent in May and November each year. If you receive an eligibility survey at another time, please contact the JPE Program at JPEProgram@courts.state.va.us to verify the authenticity of the survey.

- **Evaluation Surveys:**

Evaluation surveys take place throughout the year. If you are selected to evaluate a judge, you will receive a hard copy letter, on Supreme Court of Virginia letterhead, informing you that you have been selected to evaluate a particular judge. The letter will let you know that you should expect an e-mail within the next several days that will contain a link to the evaluation instrument.

After a few days, you should receive the e-mail from judiciaeval@vcu.edu that contains the link. A week to 10 days later, you may receive a reminder if you have not completed the survey.

12. I have never received any e-mails about the JPE process. Why not?

The JPE Program uses contact information that is on file with the Virginia State Bar (VSB). The eligibility survey e-mails are sent to all attorneys who are active and in good standing. Possible reasons why you may not have received an e-mail include:

- *Out of date contact information on file with the VSB.*
- *Automatic filtering by your e-mail system. You can check your e-mail folders to see if the e-mail was filtered. If so, please try adding judiciaeval@vcu.edu to your address book.*

13. I completed the eligibility survey and selected names of judges I appeared before, but I never received an evaluation survey for the judge I see most often. Why?

There are a couple of reasons why you may not have received an evaluation survey for a particular judge:

- *More than 250 potential evaluators were identified for that judge, and you were eliminated by the random selection process (see question 9, above).*
- *You were selected to evaluate other judges from the same cohort and were eliminated for that reason (see question 19, below).*

14. How often are judges evaluated?

Judges who are in their first term at a particular level of court (i.e., district or circuit), will be evaluated three times: after the first year on the bench, during the middle of the term, and during the last year of the term. The end-of-term evaluation report is provided to the General Assembly as directed by statute. In subsequent terms, the judge will be evaluated only during the middle of the term and during the last year of the term, again with the end-of-term evaluation report going to the General Assembly prior to re-election.

15. How is the judge's evaluation schedule determined?

The years in which evaluations occur are based on the judge's term dates and whether the judge is in his or her first or subsequent term. Evaluations may be

conducted any time during the year. End-of-term evaluations will be completed in time to be transmitted to the General Assembly by December 1.

16. I noticed that several judges in my locality are being evaluated this year. Why are the evaluations clustered together like that?

The evaluation schedules are based on the judges' term dates. Occasionally, the term dates coincide to require several judges in the same circuit or district to be evaluated during the same year.

17. How many appearances are required for an attorney to receive a survey?

If an attorney has appeared before a judge once during the relevant time period, that attorney is eligible to complete an evaluation survey. However, you should not complete a survey or answer particular questions if you do not feel that you have enough experience with the judge to provide a valid assessment of the judge's conduct.

18. How many judges are evaluated each year?

We anticipate that between 130 and 150 judges will be evaluated each year.

19. I practice in many different localities. With so many judges being evaluated, does that mean I will be inundated with surveys?

No. In any given year, the judges being evaluated are divided into groups, referred to as "cohorts." Each year there will be 5 or 6 cohorts, spaced a month or more apart. Absent unusual circumstances, you should not receive more than 2 evaluation surveys per cohort.

THE EVALUATION SURVEY INSTRUMENT

20. Why is a new rating scale being used?

In 2015, the JPE Advisory Committee recommended changing the rating scale to collect observations of the frequency of an evaluated judge's behavior, rather than qualitative assessment of the behavior. This type of scale is reported to help minimize potential inherent bias on the part of survey respondents.

21. How are results compiled?

Most surveys will be compiled through the electronic survey protocol, which is conducted by VCU-SERL. Any completed paper surveys are sent directly to VCU-SERL. Observing very stringent standards of security and confidentiality, with access limited only to authorized personnel, VCU-SERL receives and enters all survey responses. Comments are also entered. Responses are tabulated.

THE FACILITATOR JUDGE

22. What is a facilitator judge?

A facilitator judge is a retired judge who has received training to prepare him or her to observe the evaluated judge and to help fully discuss with the evaluated judge the evaluation reports, the judge's self-evaluation, and the facilitator's direct observation.

23. Does the facilitator judge have experience in the type of court on which the evaluated judge is sitting? (i.e., Circuit, General District or J&DR)

Yes.

THE EVALUATION REPORT

24. Who sees my comments?

The free-form comments are provided only to the evaluated judge and the facilitator judge. They are collected solely to assist the evaluated judge in his or her self-improvement. You should write your comments with that use in mind.

25. Who sees the evaluation form I complete?

The individual evaluation responses can be accessed only by staff at VCU-SERL, who have signed confidentiality agreements. All of the ratings are compiled by VCU-SERL into an aggregate report for each judge. The judges are not told what particular attorneys are included in their evaluation pool, or which of those attorneys completed surveys.

26. Can I see the judge's report?

End-of-term reports that are provided to the General Assembly are posted on Virginia's Legislative Information System Website under "Reports to the General Assembly."

All other documents related to a judge's evaluation are not public and are confidential. Virginia Code § 17.1-100.

27. Are respondents' comments included in the report submitted to the General Assembly?

No. Comments have never been included in the reports sent to the General Assembly.

Beginning in 2016, comments are only collected on initial and mid-term evaluations. They are collected only for the purpose of judge self-improvement. Comments are not collected during the end-of-term evaluation process.

§ 17.1-100. Judicial performance evaluation program.

A. The Supreme Court, by rule, shall establish and maintain a judicial performance evaluation program that will provide a self-improvement mechanism for judges and a source of information for the reelection process. By December 1 of each year, the Supreme Court, or its designee, shall transmit a report of the evaluation in the final year of the term of each justice and judge whose term expires during the next session of the General Assembly to the Chairmen of the House and Senate Committees for Courts of Justice.

B. The reporting requirement of this section shall become effective when funds are appropriated for this program and shall apply to the evaluation of any justice or judge who has had at least one interim evaluation conducted during his term. For any judge or justice elected or reelected on or after January 1, 2014, an interim evaluation of each individual justice or judge shall be completed during his term. Such interim evaluation shall be commenced by the judicial performance evaluation program no later than the midpoint of his term.

C. All records created or maintained by or on behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge are confidential and shall not be disclosed, except that any report provided to the General Assembly pursuant to this section shall be a public record that is open to inspection.

RULES OF SUPREME COURT OF VIRGINIA
PART NINE
JUDICIAL PERFORMANCE EVALUATION PROGRAM

Rule 9:1. Purpose and Operation.

As provided by § 17.1-100 of the Code of Virginia, the Supreme Court of Virginia hereby establishes a judicial performance evaluation program that will provide both a self-improvement mechanism for judges and a source of information for the reelection process. The Program shall be maintained by the Office of the Executive Secretary who may engage a third party contractor to conduct surveys and prepare evaluations.

Promulgated by Order dated October 31, 2014; effective immediately.

Rule 9:2. Confidentiality.

All surveys, responses, evaluations, and other records created or maintained by or on behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge are confidential and may only be shared with the subject judge, or a facilitator judge assigned by the program to assist with the evaluation, and shall not be disclosed to any third party; except that any report provided to the General Assembly pursuant to this section shall be a public record that is open to inspection as provided in § 17.1-100.

Promulgated by Order dated October 31, 2014; effective immediately.

Judicial Performance Evaluation Program Advisory Committee

Hon. Cleo E. Powell, Justice	Supreme Court of Virginia
Hon. Theresa M. Chafin, Judge	Court of Appeals of Virginia
Hon. Joi Jeter Taylor, Judge	Thirteenth Judicial Circuit
Hon. Jerrauld C. Jones, Judge	Fourth Judicial Circuit
Hon. Clifford L. Athey, Jr., Judge	Twenty-sixth Judicial Circuit
Hon. R. Edwin Burnette, Jr., Judge	Twenty-fourth Judicial Circuit
Hon. Tracy W. J. Thorne-Begland, Judge	General District Court, Thirteenth Judicial District
Hon. Becky J. Moore, Chief Judge	General District Court, Eighteenth Judicial District
Hon. Jacqueline F. Ward Talevi, Chief Judge	General District Court, Twenty-third Judicial District
Hon. A. Ellen White, Judge	Juvenile & Domestic Relations District Court, Twenty-fourth Judicial District
Hon. Alfreda Talton-Harris, Chief Judge	Juvenile & Domestic Relations District Court, Fifth Judicial District
Hon. Rufus A. Banks, Jr., Judge	Juvenile & Domestic Relations District Court, First Judicial District
Hon. Merlin M. Renne, Retired Judge	General District Court, Ninth Judicial District
Kevin Martingayle, Esquire	Bischoff Martingayle, P.C.
Hon. Edward Semonian, Jr., Clerk	Alexandria Circuit Court
Patricia G. Davis	JPE Program Director, <i>Ex Officio</i>
Joanne B. Rome	Administrative Counsel to Chief Justice Donald W. Lemons, <i>Ex Officio</i>